

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

In Re:

Ernestine Allen

Case No. 11-80502

Chapter 13

Social Security No. xxx-xx-6640

Address: 205 South Driver Street, Durham, 27703-

Debtor

OBJECTION TO CLAIM

NOW COMES the Debtor above-named, through counsel, pursuant to 11 U.S.C. §502 and Bankruptcy Rule 3007, who respectfully objects to the proof of claim filed by the creditor NATIONWIDE ADVANTAGE MORTGAGE and dated May 17, 2011, for the following reasons:

1. The Debtor believes the “pre-petition” arrearage claim in the amount of \$11,603.26 is overstated. The Debtor believes the correct amount is \$9,250.00.
2. The Proof of Claim filed by Nationwide Advantage Mortgage includes \$2,353.26 of fees and charges, consisting of the following:
 - a. \$296.00 for later charges between August 2010 and March 2011;
 - b. \$611.24 for uncollected late charges;
 - c. \$1,446.02 for foreclosure fees and costs.
3. The Proof of Claim filed also includes a billing statement from the foreclosure attorney, dated March 30, 2011, for \$1,690.04.
4. Upon information and belief, Nationwide Advantage Mortgage has not, in violation of N.C.G.S. § 45-91 and *In re Saeed*, 200 WL 74641 (Bankr. M.D.N.C. September 17, 2010), sent the Debtor, the Debtor’s attorney or the Chapter 13 Trustee any notice of the assessment of these fees.
5. Even if *arguendo* the Proof of Claim itself constitutes notice of the assessment of these fees, based the disclosures in the Proof of Claim itself, all of these fees and charges were all assessed on or before March 30, 2011.
6. Accordingly, the notice of assessment of fees was due on or before May 16, 2011, and as such these fees should be

Because the Debtor contests the amount of the pre-petition arrearage claimed by said creditor in its Proof of Claim filed in this case, pursuant to Rule 34 of the Federal Rules of Civil Procedure and

Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Debtor is, by separate document attached herewith, requesting production from said creditor of a payment history and related information.

WHEREFORE, the Debtor prays that the Court enter an Order reducing the pre-petition arrearage claim to the sum of \$9,250.00 . Furthermore, in the event that said creditor contests this objection by filing a formal response thereto, the Debtor requests that, until such time as the aforementioned payment history is provided, the Court treat any hearing upon this Objection as preliminary, in accordance with the power vested in this Court pursuant to 11 U.S.C. 105(a).

Dated: July 13, 2011

LAW OFFICES OF JOHN T. ORCUTT, P.C.

/s Edward Boltz
Edward Boltz
N.C. State Bar No. 23003
6616-203 Six Forks Road
Raleigh, N.C. 27615
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CERTIFICATE OF SERVICE

I, Renee Nolte, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on July 13, 2011. I served copies of the foregoing **OBJECTION TO CLAIM** electronically or, when unable, by regular first-class U.S. mail, addressed to the following parties:

NATIONWIDE ADVANTAGE MORTGAGE

Attn: Managing Agent

Post Office Box 91900

Des Moines, IA 50391-

U.S. Bankruptcy Administrator

Richard M. Hutson, II

Chapter 13 Trustee

/s Renee Nolte

Renee Nolte